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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/876,690
Filing Date: June 07, 2001
Appellant(s): COLLAMORE ET AL.

Dicran Halajian
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/14/08 appealing from the Office action mailed 11/14/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0087503	JUDD et al	7-2002
5,832,450	MYERS et al.	11-1998
6,192,112	RAPAPORT et al.	2-2001

Official Notice

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-10, 12-16, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Judd et al.* (US 2002/0087503; hereinafter *Judd*), Myers et al.(5,832,450; hereinafter Myers), in view of Rapaport et al. (6,192,112; hereinafter Rapaport) and in view of Official Notice.

(A) As per currently amended claim 1, *Judd* discloses a medical information management system, comprising:

an information acquisition device (*Judd* : par. [0065]; Fig. 2);

a computer coupled to the information acquisition device, the compute including logic for receiving information from the information acquisition device, for setting a reconsider flag to indicate that new information is available for informing a user of arrival of the new information a study to which the new information corresponds (*Judd*: par. [0067]; Figs. 2-3); wind

(3) a memory element associated with the computer, where the memory element stores the information and associates the information with the study (*Judd*: par. [0075], [0077] and [0078]).

Judd, however, fails to expressly disclose a medical information management system, comprising:

(4) a computer coupled to the information acquisition device, for setting a flag if the study has been reviewed and for not setting a the reconsider flag if the study has not been reviewed even when the new information is available, for notifying the user if the user is currently reviewing the study, and for not notifying the user is the user is not currently reviewing the study.

Nevertheless, Examiner takes Official Notice that this technique is notoriously well known and obvious. For example, Microsoft Outlook® uses an assortment of "flagging" techniques to indicate various status alerts pertaining to new information and associated tasks to perform. Moreover, these techniques were developed and used prior to Applicant's invention to allow a user to more effectively manage material to be read. Moreover, Examiner notes that Rapaport teaches the use of alerts (i.e., setting flags) if information has been updated (i.e., addition of new information) (Rapaport: col.28, lines 55-col. 29, line 3). Furthermore, Myers teaches the use of notifications (i.e., setting flags) to alert users to the arrival of new information to previously reviewed or currently viewed records (Myers: col. 9, lines 63-67).

One of ordinary skill in the art would have found it obvious at the time of the invention to combine the teachings of Rapaport, Myers and Official Notice with the teachings of *Judd* with the motivation of providing an effective means of notifying pertinent parties on the status of information.

(B) As per original claim 2, *Judd* discloses the medical information management system of claim 1, wherein the information includes medical image information (*Judd*: par. [0035]). Examiner has noted insofar as claim 2 recites "at least one of ultrasound image information, medical image information, patient measurements, calculations, findings, comments, waveforms, chart records, audio recordings, Doppler audio, Doppler flow sounds or heart sounds, Doppler audio, and a medical study report," medical image information has been recited. (C) As per previously presented claim 3, *Judd* fails to expressly disclose the medical information management system of claim 2, further comprising a database, where the database includes a plurality of flags, and the reconsider flag is used to indicate to said user of the medical information management system that the new information has been associated with the study. Nevertheless, these features are old and well known in the art, as evidenced by *Rapaport*. In particular, *Rapaport* discloses the medical information management system of claim 2, further comprising a database, where the database includes a plurality of flags, and the reconsider flag is used to indicate to a user of the medical information management system that the new information has been associated with the study (*Rapaport*: col. 28, lines 40-col. 29, line 3) (Examiner also notes that *Judd* teaches the use of e-mail notification to indicate new information is available and provides hyper-links (i.e., flags) within the email to the new information.).

One of ordinary skill would have found it obvious at the time of the invention to include the aforementioned features of *Rapaport* with the teachings of *Judd* with the motivation of providing effective and timely communication of medical information to pertinent parties; and to provide efficient medical information management (*Rapaport*: col. 1, lines 52-col. 2, line 5).

(D) As per previously presented claim 4, *Judd* discloses the medical information management system of claim 3, further comprising a client application, the client application further comprising a user interface configured to present to the user of the medical information management system an indication that the new information has been associated with the study (*Judd*: par. [0023] – [0026]; [0067]; Fig. 1, 13).

(E) As per previously presented claim 6, *Judd* discloses the medical information management system of claim 4, where the client application informs the user of the arrival of further new information pertaining to a further study that the user is not reviewing (*Judd*: par. [0023] – [0026]; par. [0067]; Fig. 1, 13).

(F) Claims 7-8, 10 and 12 substantially repeat the same limitations of claims 1-4, and 6 and therefore, are rejected for the same reasons given for those claims and incorporated herein.

(G) Claims 9, 13-16 and 18 substantially repeat the same limitations of claims 1-4, 7, and 6 and therefore, are rejected for the same reasons given for those claims and incorporated herein.

(H) As per previously presented claim 19, *Judd* fails to expressly disclose the medical information management system of claim 1, wherein the computer is configured to inform the user of the arrival of the new information in response to addition of the new information to the study.

Nevertheless, these features are old and well known in the art, as evidenced by *Myers*. In particular, *Myers* discloses the medical information management system of claim 1, wherein the computer is configured to inform the user of the arrival of the new information in response to addition of the new information to the study (*Myers*: col. 2 lines 35-39).

One of ordinary skill in the art would have found it obvious at the time of the invention to combine the teachings of *Myers* with the combined teachings of *Judd* and Official Notice with the motivation of providing an efficient medical record system(*Myers*: col. 2, lines 35-39).

(I) Claims 20 and 21 substantially repeat the same limitations of claim 19 and therefore, are rejected for the same reasons given for claim 19 and incorporated herein.

(10) Response to Argument

In the Appeal Brief filed 14 April 2008, Appellant makes the following arguments:

(A) Judd fails to teach setting or not setting a flag and providing or not providing notification under the specific conditions recited in claims 1, 7 and 13 as well as requesting the Examiner provide prior art relating to the Official Notice taken regarding the Microsoft Outlook referencing “flagging” techniques.

Examiner will address Appellant’s arguments in sequence as they appear in the brief.

Response to Argument (A):

In response to the first argument, the Examiner respectfully submits that the Judd, Rapaport and Myers references in combination, and not Official Notice, *per se*, that was relied upon for the specific teaching of using alerts (i.e., setting flags) if information has been updated (i.e., addition of new information) (Rapaport: col.28, lines 55-col. 29, line 3). Furthermore, Judd, Rapaport and Myers teach the use of notifications (i.e., setting flags) to alert users to the arrival of new information to previously reviewed or currently viewed records (Myers: col. 9, lines 63-67. The Official Notice was relied on for primarily teaching of well know and obvious features, for example, Microsoft Outlook® that using an assortment of “flagging” techniques to indicate various status alerts pertaining to new information and associated tasks to perform. Thus, the

proper combination of the applied references would be the incorporation of flagging techniques as taught by Microsoft Outlook® to alert users to the arrival of new information with the systems as taught by Judd, Rapaport and Myers.

With regards to taking Official Notice, the Examiner firstly notes that Appellant's present challenge to the basis of rejection made in an Office Action dated November 14, 2007, is not timely. In particular, the courts have held that "If appellant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art". *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, appellant is charged with rebutting the well known statement in the next reply after the Office action in which the well known statement was made.

In light of the above, it is evident that Appellant's present challenge should have been made in the next reply to the Office Action dated June 5, 2007, namely the Amendment and response filed August 31, 2007. Because of Appellant's failure to seasonably traverse the "well known statements" made on the Office Action dated June 5, 2007, Appellant's present rebuttal is moot, since the object of the well known statement is taken to be admitted prior art *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Secondly, the Examiner hereby directs Applicant's attention to "Sams Teach Yourself Microsoft Outlook 2000 in 10 Minutes" (cited herewith), which clearly evidences that conditions for flag setting and notification that new information has arrived or is available was known as far back as 1999, which is before the filing of Applicant's present application (note especially pages 2-4 of "Sams Teach Yourself Microsoft Outlook 2000 in 10 Minutes"). As such, the knowledge

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and use of conditions for flag setting and notification that new information has arrived, in general, has clearly existed in the art prior to Applicant's claimed invention and the courts have held that even if a patent does not specifically disclose a particular element, said element being within the knowledge of a skilled artisan, the patent taken in combination with that knowledge, would put the artisan in possession of the claimed invention *In re Graves*, 36 USPQ 2d 1697 (Fed. Cir. 1995).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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